IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 280 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARPATBHAI JANABHAI NAIK - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1, MS BANNA S DUTTA for Appellant(s) : 1,
MR HL JANI APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 19/10/2007

JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.S. JHAVERI)

1.0 This appeal is directed against the judgment and order dated 11.03.1999 passed by the Addl. Sessions Judge, Vadodara in Sessions Case No. 191 of 1998 whereby, the appellant – accused was convicted for the offences punishable u/s. 302 of the Indian Penal Code, 1860 (for short, "the I.P.C.") and Section 135 of the Bombay Police Act (for short, "the B.P. Act"). For conviction u/s. 302 of the I.P.C., the appellant was sentenced to undergo imprisonment for life with fine of Rs.500/- and in default of payment of fine, rigorous imprisonment for a further period of three months. While for conviction u/s. 135 of the B.P. Act, the appellant was sentenced to undergo simple imprisonment for a period of four months. Both the sentences were ordered to run concurrently. The appellant was also given the benefit of set-off.

2.0 The brief facts of the prosecution case are as under;

2.1 The appellant was residing along with his family consisting of his second wife – Jashodaben and step son – Rakeshbhai in Village Kosindra, Taluka Sankheda of Vadodara District and was earning his livelihood by working as a Mechanic.

2.2 About 13 – 14 years prior to the alleged incident in question, a dispute had taken place between the appellant and his first wife – Laxmiben on the ground that the appellant was having illicit relationship with said Jashodaben. Ultimately, the appellant killed his first wife – Laxmiben, for which he was convicted for the offence punishable u/s. 302 of the I.P.C. and sentenced to undergo imprisonment for life. In connection with the said offence, the appellant was released from the custody after undergoing the period of imprisonment on 15.08.1997. On the return of the appellant after undergoing the period of imprisonment, regular quarrels used to take place between the appellant and the family of the deceased. As a result of that the son of the appellant – Vikrambhai as well as his daughter-in-law – Vidhyaben

started residing separately.

2.3 On 02.02.1998 a heated argument took place between the appellant and said Jashodaben on some domestic issue which was, subsequently, settled by the intervention of the step son – Rakeshbhai. Thereafter, said Rakeshbhai left to a nearby market. At around 1800 hrs., Rakeshbhai heard some noise coming from the side where his house was situated and noticed that a crowd was gathering at that place. Therefore, he proceeded towards his house.

2.4 On reaching his house, he noticed that the appellant was inflicting *'Padiya'* (a sharp-edged weapon) blows on the body of Jashodaben. On noticing the said incident, certain persons tried to rescue Jashodaben from further assaults. By that time, the appellant fled the scene of offence. As Jashodaben had sustained severe bodily injuries, a vehicle was called for so as to take her to a nearby Hospital. However, during the course of journey, at around

2400 hrs., Jashodaben succumbed to her injuries.

2.5 On 03.02.1998 a complaint came to be filed against the appellant by the step-son Rakeshbhai, which was registered as I – C. R. No. 12 of 1998 with Bodeli Police Station for offences punishable u/s. 302 of I.P.C. and Section 135 of the B.P. Act. Preliminary investigation was carried out. The Investigating Officer went to the scene of offence and performed inquest *`panchnama'*. *`Marnottar'* form was filled up and necessary arrangement was made for sending the dead body for performing post-mortem.

2.6 In the meanwhile, the Investigating Officer carried out *`panchnama'* of the scene of offence and also collected necessary *`muddamal'* articles. The clothes worn by the deceased at the relevant point of time were also seized. Thereafter, the *`muddamal'* articles so collected were sent to F.S.L. for examination. On receipt of the F.S.L. Report, PM note and other Reports, they were kept in the investigation file.

2.7 Further investigation was carried out and statements of several witnesses were recorded. As cogent evidence was found against the appellant, he was arrested on the same day, i.e. on 03.02.1998 after completing necessary formalities. Arrest *'panchnama'* was prepared in the presence of *'panchas'*. During the course of interrogation, as the appellant showed willingness to produce the *'muddamal'* weapons used in the commission of the alleged offence in question, the same were recovered by way of a separate *'panchnama'* in the presence of *'panchas'*.

2.8 On completion of investigation, charge-sheet was filed against the appellant in the Court of learned Judicial Magistrate First Class, Sankheda. As the case was exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class, Sankheda committed the case to the Sessions Court, Vadodara and the same was numbered as Sessions Case No.191 of 1998. The matter was then

transferred to the learned Addl. Sessions Judge for disposal on merits. On production of the accused person, the learned Addl. Sessions Judge framed the charge and as the appellant pleaded not guilty to the said charges, trial was conducted against him.

3.0 The prove the guilt against the appellant, the prosecution had examined in all seven witnesses namely, PW – 1 Rakeshbhai Shankarbhai at Exhibit – 9, PW – 2 Kuchiben Vikrambhai at Exhibit – 12, PW – 3 Dr. Nilesh K. Shah at Exhibit – 13, PW – 4 Vikrambhai Bhikhabhai at Exhibit – 19, PW – 5 Vinodbhai Amratbhai at Exhibit – 20, PW – 6 Hasmukhbhai Kantilal Joshi at Exhibit – 22 and PW – 7 Navinchandra V. Desai at Exhibit – 24.

3.1 The prosecution had also relied upon several documentary evidence, more particularly, the evidence in the form of complaint at Exhibit – 11, the PM note at Exhibit – 14, the Inquest '*panchnama*' at Exhibit – 15, the arrest '*panchnama*' at Exhibit – 17, the discovery '*panchnama*' at

Exhibit – 21 and the F.S.L. Report at Exhibit – 25.

3.2 On submission of the closing 'purshis', the further statement of the appellant was recorded u/s. 313 of the Code of Criminal Procedure, 1973. After hearing learned counsel for the respective parties, the learned Addl. Sessions Judge passed the impugned judgment and order convicting the appellant and imposing sentence as stated in the earlier part of this judgment. Hence, the present appeal.

4.0 Ms. Banna S. Dutta learned Advocate for the appellant has submitted that the prosecution has failed to establish the presence of the appellant at the scene of offence at the relevant point of time beyond doubt. She has submitted that there is not an iota of evidence on record to connect the appellant with the crime in question in any manner whatsoever. Hence, the impugned judgment and order passed by the Court below deserves to be quashed and set aside.

5.0 Mr. H. L. Jani learned APP has submitted that the guilt of the appellant is proved beyond doubt from the evidence of PW – 2 Kuchiben Vikrambhai at Exhibit – 12, as she is an eye-witness to the incident in question. He has submitted that the documentary evidence on record in the form of PM note at Exhibit – 14, Inquest '*panchnama*' at Exhibit – 15, Arrest '*panchnama*' at Exhibit – 17, discovery '*panchnama*' at Exhibit – 21 and the F.S.L. Report at Exhibit – 25 support the case of the prosecution and prove the guilt of the appellant beyond doubt.

6.0 Heard learned counsel for the respective parties and perused the entire oral as well as documentary evidence on record. The prosecution has examined the neighbour of the deceased Kuchiben Vikrambhai as PW – 2 at Exhibit – 12. In her deposition, she has categorically stated that on the date of the incident, at around 1800 hrs., she heard shouts regarding some quarrel going on between the appellant and the deceased in their house and, therefore, she went to their house. At that time, she noticed that the

appellant had inflicted an Axe blow on the right side of the neck and, thereafter, also inflicted '*Padiya*' blows on the neck portion of the deceased. She has further deposed that when she tried to stop the appellant from inflicting further blows, the appellant tried to assault her. However, by that time, she ran away from the place of incident and as a crowd had started to gather at that place, the appellant fled the scene of offence.

6.1 This witness has been cross-examined by the Court below. However, nothing incriminating has come on record which may lead us to believe her evidence to be untrue or unreliable. This witness has categorically narrated about the entire incident in detail along with the role played by the appellant and as to how the '*muddamal* ' weapons – Axe and '*Padiya* ' were used in the commission of the offence in question by the appellant. Thus, from the evidence led by this witness, it is clearly established that she is an eye-witness to the incident in question. It may be noted that in her deposition, she has also stated about the fact that the

appellant was released from the custody only a few days back, after undergoing imprisonment for conviction u/s. 302 of the I.P.C. for killing his wife – Laxmiben.

7.0 The prosecution has examined the complainant Rakeshbhai Shankarbhai as PW – 1 at Exhibit – 9. He has also narrated the same facts as has been narrated by PW – 2 Kuchiben Vikrambhai at Exhibit – 12 but, he is not an eye-witness to the alleged incident in question. Nothing incriminating has come out from the cross-examination of this witness which may lead us to believe his evidence to be untrue or unreliable. However, it may be noted that this witness has also stated about the fact that the appellant was released from the custody on 15.08.1997, after undergoing imprisonment for conviction u/s. 302 of the I.P.C. for killing his wife – Laxmiben. He has also stated that an illicit relationship existed between the appellant and the deceased.

8.0 The prosecution has examined Vikrambhai Bhikhabhai as PW – 4 at Exhibit – 19 who was also a

neighbour and was residing along with his family near the house of the deceased at the relevant point of time. This witness has also categorically stated about the fact that the appellant was released from the custody only a few months back, after undergoing imprisonment for conviction u/s. 302 of the I.P.C. for killing his wife – Laxmiben and about the illicit relationship between the appellant and the deceased.

9.0 Thus, if we carefully go through the oral evidence led by the aforesaid three witnesses, viz. PW – 2 Kuchiben Vikrambhai at Exhibit – 12, PW – 1 Rakeshbhai Shankarbhai at Exhibit – 9 and PW – 4 Vikrambhai Bhikhabhai at Exhibit – 19, it is clearly established that PW–2 – Kuchiben Vikrambhai is an eye-witness to the entire incident in question while PW–1 - Rakeshbhai Shankarbhai and PW–4 – Vikrambhai Bhikhabhai are hear-say witnesses. PW–2 – Kuchiben Vikrambhai has categorically narrated about the entire incident in detail and as to how the '*muddamal* ' weapons – Axe and '*Padiya* ' were used by the appellant in the commission of the offence in question. Thus, the presence of the appellant at the scene

of offence at the relevant point of time is established beyond doubt. It may be noted that on one aspect the evidence led by all the aforesaid witnesses are consistent, viz. about the fact that the appellant was released from the custody after undergoing imprisonment for conviction u/s. 302 of the I.P.C. for killing his first wife – Laxmiben and also about the alleged illicit relationship between the appellant and the deceased.

10.0 Considering the evidence led by PW–2 – Kuchiben Vikrambhai at Exhibit – 12 in light of the fact regarding conviction of the appellant u/s. 302 of the I.P.C. for killing his first wife – Laxmiben, it clearly transpires that there was friction in the relationship of the appellant and the deceased more particularly, when the incident in question had taken place after the appellant had returned to the house of the deceased, after undergoing imprisonment for conviction u/s. 302 of the I.P.C. for killing his first wife – Laxmiben. The said aspect also gets support from the fact that within a few days after the return of the appellant, after undergoing imprisonment for conviction u/s. 302 of the I.P.C., the son as

well as the daughter-in-law of the appellant had started residing separately. The aforesaid facts clearly lead us to believe that the appellant was not at all happy with his relationship with the deceased. Thus, the existence of motive behind the offence in question is also proved beyond doubt.

11.0 The prosecution case also gets support from the discovery '*panchnama*' at Exhibit – 21 as also the evidence led by the '*panch*' witness – Vinodbhai Amratbhai Mochi as PW – 5 at Exhibit – 20. Nothing incriminating has come out from the cross-examination of this witness which may lead us to believe his evidence to be untrue or unreliable.

12.0 The F.S.L. Report at Exhibit – 25 also supports the case of the prosecution which clearly shows the existence of human blood stains on the '*muddamal*' weapons – Axe and '*Fadiya*' which was similar to the blood group of the deceased, viz. Blood Group 'A'. The control mud collected from the place of incident also contained human blood of Blood Group 'A'. Thus, the discovery '*panchnama*' at Exhibit –

21 and the F.S.L. Report at Exhibit – 25 also supports the case of the prosecution beyond doubt and point towards the guilt of the appellant.

13.0 So as to prove the aspect of homicidal death, the prosecution has relied upon the PM Note at Exhibit – 14 and the deposition of Dr. Nilesh Kanaiyalal Shah as PW – 3 at Exhibit – 13 who has performed the Post-mortem of the deceased. In his deposition, he has categorically stated that all the injuries were anti-mortem and that they were possible by the infliction of sharp and heavy weapon. Nothing incriminating has come out from the cross-examination of this witness. Thus, the medical evidence on record also supports the case of the prosecution and it is proved beyond doubt that the deceased died a homicidal death.

14.0 Considering the oral as well as documentary evidence available on record, as discussed herein above, we are of the opinion that the prosecution has established beyond doubt the guilt of the appellant. We are in complete

agreement with the reasonings given by and the findings arrived at by the Court below and, therefore, find no reasons to interfere with the same. Hence, the appeal deserves to be dismissed.

15.0 For the foregoing reasons, the appeal is dismissed. Office is directed to send the Records & Proceedings to the trial Court concerned forthwith.

(R. P. DHOLAKIA, J.) (K. S. JHAVERI, J.)

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